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## 10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

## 11 IN AND FOR THE COUNTY OF WASHOE

12 KATHRYN CLAIRE CAMPBELL,

13 CASE NO.: CV07 01631

14 vs.

15 Plaintiff,  
16 ANSWER TO COMPLAINT FOR  
17 DECLARATORY RELIEF; and  
18 CROSS CLAIM19 CATHERINE WERNER; SHARON D.  
20 CAMPBELL; METROPOLITAN LIFE  
21 INSURANCE COMPANY, a Foreign  
22 Corporation; and, DOES I-V,

23 Defendants.

24 and

25 CATHERINE LEE WERNER,

26 Cross Claimant,

27 vs.

28 METROPOLITAN LIFE INSURANCE  
COMPANY, a Foreign Corporation; and  
DOES I-V,

Cross Defendants

Defendant, Catherine Lee Werner, (hereinafter "Defendant Werner") in answer to the complaint for declaratory relief, filed in the above-captioned matter, does herein admit, deny, and allege as follows:

1. Answering paragraph 1, Defendant Werner admits, based on information and belief, that Plaintiff is a resident of the State of New York. Defendant Werner further admits the existence of a life insurance policy number 0000003220 issued by Defendant

///



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12 KATHRYN CLAIRE CAMPBELL, CASE NO.: CV07 01631

13 vs. Plaintiff, ANSWER TO COMPLAINT FOR  
14 and DECLARATORY RELIEF; and  
15 CATHERINE WERNER; SHARON D. CROSS CLAIM

16 CAMPBELL; METROPOLITAN LIFE  
17 INSURANCE COMPANY, a Foreign  
18 Corporation; and, DOES I-V,

19 Defendants,

20 and

21 CATHERINE LEE WERNER,

22 vs. Cross Claimant,

23 METROPOLITAN LIFE INSURANCE  
24 COMPANY, a Foreign Corporation; and  
25 DOES I-V,

26 Cross Defendants

27 Defendant, Catherine Lee Werner, (hereinafter "Defendant Werner") in answer to  
28 the complaint for declaratory relief, filed in the above-captioned matter, does herein admit,  
deny, and allege as follows:

1. Answering paragraph 1, Defendant Werner admits, based on information and  
belief, that Plaintiff is a resident of the State of New York. Defendant Werner further  
admits the existence of a life insurance policy number 0000003220 issued by Defendant  
///

1      Metropolitan Life Insurance Company (hereinafter "MetLife") on the life of Cole C.  
2      Campbell (hereinafter the "Life Insurance Policy"). Defendant Werner denies the  
3      remaining allegations in paragraph 1.

4      2. Answering paragraph 2, Defendant Werner admits that she received a seventy  
5      percent (70%) interest in the proceeds of the Life Insurance Policy as a named beneficiary  
6      of that policy, but denies the remaining allegations in paragraph 2. Defendant Werner  
7      herein alleges that her domicile is in the State of Missouri.

8      3. Answering paragraph 3, Defendant Werner admits, based on information and  
9      belief, that Defendant Sharon D. Campbell (hereinafter "Defendant Campbell") is a resident  
10     of North Carolina but denies the remaining allegation in paragraph 3.

11     4. Answering paragraph 4, Defendant Werner is without information sufficient to  
12     form a belief as to the truth or falsity of the allegation contained in paragraph 4, and  
13     therefore denies such allegation.

14     5. Answering paragraph 5, Defendant Werner is without information sufficient to  
15     form a belief as to the truth or falsity of the allegations contained in paragraph 5, and  
16     therefore denies such allegations.

17     6. Answering paragraph 6, Defendant Werner admits the allegation in paragraph  
18     6, except that Cole C. Campbell (hereinafter "Decedent") died on January 5, 2007, not on  
19     February 5, 2007, as averred in the Complaint.

20     7. Answering paragraph 7, Defendant Werner admits the allegation in paragraph  
21     7.

22     8. Answering paragraph 8, Defendant Werner admits the allegation in paragraph  
23     8.

24     9. Answering paragraph 9, Defendant Werner admits the allegation in paragraph  
25     9.

26     10. Answering paragraph 10, Defendant Werner is without information sufficient to  
27     form a belief as to the truth or falsity of the allegations contained in paragraph 10, and  
28     therefore denies such allegations.

1        11. Answering paragraph 11, Defendant Werner is without information sufficient to  
2 form a belief as to the truth or falsity of the allegation contained in paragraph 11, and  
3 therefore denies such allegation.

4           12. Answering paragraph 12, Defendant Werner admits that she has filed a written  
5 objection with MetLife in regard to the distribution of a portion of the life insurance  
6 proceeds under the terms of the policy, but denies the remaining allegation in paragraph  
7 12.

8        13. Answering paragraph 13, Defendant Werner admits that she has filed a written  
9 objection with MetLife in regard to the distribution of a portion of the life insurance  
10 proceeds under the terms of the policy, but denies the remaining allegation in paragraph  
11 13.

12           14. Answering paragraph 14, Defendant Werner is without information sufficient to  
13 form a belief as to the truth or falsity of the allegation contained in paragraph 14, and  
14 therefore denies such allegation.

15        15. Answering paragraph 15, Defendant Werner is without information sufficient to  
16 form a belief as to the truth or falsity of the allegation contained in paragraph 15, and  
17 therefore denies such allegation.

18        16. Answering paragraph 16, Defendant Werner is without information sufficient to  
19 form a belief as to the truth or falsity of the allegation contained in paragraph 16, and  
20 therefore denies such allegation.

21       **17. Answering paragraph 17.** Defendant Werner is without information sufficient to  
22 form a belief as to the truth or falsity of the allegation contained in paragraph 17, and  
23 therefore denies such allegation.

**FIRST CLAIM FOR RELIEF  
(Declaratory Relief Against All Defendants)**

18. Answering paragraph 18, Defendant Werner incorporates by reference each  
admission and denial made by her in answer to paragraphs 1 through 17, inclusive.

28 | III

1       19. Answering paragraph 19, Defendant Werner admits that a dispute exists as to  
2 whether plaintiff is entitled to any interest in decedent's life insurance policy. Defendant  
3 Werner denies the remaining allegations.

4       20. Answering paragraph 20, Defendant Werner admits that a dispute exists as to  
5 whether Defendant Campbell is entitled to any interest in decedent's life insurance policy.  
6 Defendant Werner denies the remaining allegations.

7       21. Answering paragraph 21, Defendant Werner is without information sufficient to  
8 form a belief as to the truth or falsity of the allegation contained in paragraph 21, and  
9 therefore denies such allegation.

10           22. Answering paragraph 22, Defendant Werner is without information sufficient  
11 to form a belief as to the truth or falsity of the allegation contained in paragraph 22, and  
12 therefore denies such allegation.

13        23. Answering paragraph 23, Defendant Werner is without information sufficient  
14        to form a belief as to the truth or falsity of the allegation contained in paragraph 23, and  
15        therefore denies such allegation.

16 ||| 24. Answering paragraph 24, Defendant denies the allegation in paragraph 24.

## **FIRST AFFIRMATIVE DEFENSE**

18 Plaintiff's complaint fails to set forth a claim upon which relief can be granted against  
19 Defendant Werner based on a number of reasons, including, but not limited to, (1)  
20 Defendant Werner is not responsible for MetLife's refusal to pay, if it is obligated to do so,  
21 (2) MetLife is not an agent under the control of Defendant Werner and, therefore,  
22 Defendant Werner is not liable for the actions or inactions of MetLife, and/or (3) the  
23 intention of Decedent was that his spouse Defendant Werner receive all the proceeds of  
24 his life insurance Policy, in their entirety..

## **SECOND AFFIRMATIVE DEFENSE**

**Plaintiff's complaint should fail for lack of jurisdiction over the subject matter pled.**

III

THIRD AFFIRMATIVE DEFENSE

Plaintiff's complaint should fail for lack of jurisdiction over the person of Defendant Werner.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to set forth a claim upon which legal fees and costs can be awarded against Defendant Werner.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's complaint as to any claims raised on behalf of Defendant Campbell should fail as Plaintiff has no right to raise such claims on behalf of Defendant Campbell.

SIXTH AFFIRMATIVE DEFENSE

Defendant MetLife should be estopped from claiming it has no obligation to pay the remaining life insurance proceeds to Defendant Werner in light of the misrepresentations MetLife made to Decedent regarding Decedent's Policy, including but not limited to, inaccurate or misleading information on its eServices web site that indicated that Defendant Werner was Decedent's sole primary beneficiary.

SEVENTH AFFIRMATIVE DEFENSE

As to any alleged right of Defendant Sharon D. Campbell to the life insurance proceeds, such right arose out of an alimony obligation owed by Decedent under a Decree of Divorce and said obligation has been satisfied. Therefore there has been accord and satisfaction for said obligation and it would be unjust enrichment for Defendant Campbell to receive any insurance proceeds from Decedent.

WHEREFORE, Defendant Werner prays for judgment in its favor and against Plaintiff as follows:

- 24        1. That Plaintiff take nothing by way of her complaint and that the same be dismissed;
- 26        2. That the Complaint be dismissed for lack of subject matter jurisdiction;

27        ///

28        ///

3. That the Complaint be dismissed for lack of *in personam* jurisdiction over Defendant Werner;
4. For an order declaring the that Defendant Catherine Werner is entitled to the remaining life insurance proceeds of the Policy and not Plaintiff or Defendant Campbell;
5. That the Court issue a briefing schedule for the parties to brief the declaratory judgment issues raised in this Complaint;
6. For costs of suit herein incurred;
7. For reasonable attorney's fees; and
8. For such other and further relief as the Court may deem just and proper.

**CROSS CLAIM**

Comes now, Cross Claimant, Catherine Werner (hereinafter "Werner"), by and through her attorneys, Dyer, Lawrence, Penrose, Flaherty & Donaldson and files this Cross Claim against Cross Defendant METROPOLITAN LIFE INSURANCE COMPANY, a Foreign Corporation, d.b.a. MetLife, Inc. as follows:

## PARTIES

1. Werner resides in Saint Louis, Missouri.
2. Werner is the widow of Cole C. Campbell (hereinafter "Decedent"), who died in Reno, Nevada, on January 5, 2007.

3. Based upon information and belief, Cross Defendant METROPOLITAN LIFE INSURANCE COMPANY, a Foreign Corporation, d.b.a. MetLife, Inc., (hereinafter "MetLife") is believed to be a foreign corporation qualified to do business in the State of Nevada and in the State of Missouri, and its principle place of business is in Saint Louis, Missouri.

**STATEMENT OF FACTS**

4. At the time of his death, Decedent was the owner of a \$1,000,000.00 Metropolitan Life Insurance, Flexible Premium Life Policy, Group: MetLife GVUL ACH Group, Policy Number 0000003220 (hereinafter the "Policy").

11

5. After Decedent's death, Werner filed a claim with MetLife for the proceeds under the Policy, and was informed by MetLife that she would receive only 70% of the Policy proceeds. MetLife has distributed 70% of the Policy proceeds to Werner. Werner is contesting the remaining distribution of the 30 % Policy proceeds.

6. Decedent intended Werner to be the sole primary beneficiary of Decedent's Policy.

7. In 2001, Decedent complied with MetLife's requirement to provide written authorization for MetLife to accept and process electronic transaction requests via MetLife's eServices web site (hereinafter the "eServices").

8. In 2003 and 2005, Decedent used and relied upon the eServices system to administer and make authorized changes to his Policy information, including the designation of beneficiaries.

9. In 2005 MetLife represented to Decedent, on the eServices system, that Werner was the sole Primary Beneficiary of Decedent's Policy.

10. On more than one occasion in 2005 and 2006, Decedent informed Werner that she was the sole beneficiary of his Policy.

## **FIRST CLAIM FOR RELIEF**

**(Declaratory Judgment)**

11. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 10 of this Cross Claim as if each were fully set forth herein.

12. Werner is a person who may sue for a declaratory judgment under NRS

30.040.  
13. A declaration of Werner's rights and status under Decedent's Policy is necessary to determine whether Werner is entitled to the remaining proceeds of the Decedent's Policy.

III

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2805 Mountain Street  
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**SECOND CLAIM FOR RELIEF****(Breach of Contract; Breach of Implied Covenant)**

14. Werner hereby alleges and incorporates by reference each and every allegation  
contained in paragraphs 1 through 13 of this Cross Claim as if each were fully set forth  
herein.

15. The Policy is a contract between MetLife and Decedent. The law implies in  
every contract a covenant of good faith and fair dealing wherein each party promises to  
perform the terms and conditions of the contract in good faith and to deal fairly with the  
other parties to the contract.

16. Werner was a third-party beneficiary of the contact between MetLife and  
Decedent.

17. MetLife had a legal, contractual and fiduciary obligation to provide accurate and  
complete information to Decedent regarding his Policy under the eServices system, so that  
Decedent was able to review, consider, and make changes in the terms of his Policy,  
including the name(s) of the primary beneficiary.

18. If there are additional primary beneficiaries under Decedent's Policy, then  
MetLife's eServices system and procedure was or is flawed, and amounted to a breach of  
MetLife's legal, contractual, or fiduciary obligations to Decedent, to the detriment and injury  
of Decedent's intended beneficiary, Werner.

19. By failing to provide accurate and correct information to Decedent and refusing  
to pay the remaining Policy proceeds to Werner, MetLife breached the covenant of good  
faith and fair dealing that they entered into with Decedent.

20. Werner has been harmed by the actions of MetLife and said harm has resulted  
in damages to Werner.

25     ///

26     ///

27     ///

28     ///

**THIRD CLAIM FOR RELIEF****(Negligence/Misrepresentation)**

1                   21. Werner hereby alleges and incorporates by reference each and every allegation  
2 contained in paragraphs 1 through 20 of this Cross Claim as if each were fully set forth  
3 herein.

4                   22. At all times relevant to this Cross Claim, MetLife was under a duty to provide  
5 Decedent accurate and correct information regarding his Policy on the eServices system.  
6 MetLife breached this duty by failing to exercise due care in regard to the information it  
7 placed on the eServices system. The actions of MetLife constitute misrepresentation or  
8 negligence.

9                   23. Alternatively, if the eServices representation showing Werner as the sole  
10 Primary Beneficiary was a mistake, error, or misrepresentation then Werner was damaged  
11 as a consequence of that mistake, error, or misrepresentation.

12                  24. Werner has been harmed by the actions of MetLife and said harm has resulted  
13 in damages to Werner.

**FOURTH CLAIM FOR RELIEF****(Promissory Estoppel)**

14                  25. Werner hereby alleges and incorporates by reference each and every  
15 allegation contained in paragraphs 1 through 24 of this Cross Claim as if each were fully  
16 set forth herein.

17                  26. MetLife knew or should have known that Decedent would rely on information  
18 present on the eServices system regarding his Policy and his beneficiary designations  
19 because MetLife intended, in creating the eServices system, that it be used for that  
20 purpose by policyholders using eServices.

21                  27. Decedent was not aware of the true state of the facts of his Policy information  
22 because of the inaccurate, incorrect, or omitted information placed on the eServices  
23 system by MetLife regarding Decedent's choice of a primary beneficiary.

24                  ///

28. Decedent relied, to his detriment, on the information on eServices and as a result of his reliance on that information, Werner was been damaged because she did not receive the full Policy proceeds intended by the Decedent.

29. Based on the intent, use and application of the eServices system in relation to Decedent's account, MetLife should be estopped from asserting that Werner is not the primary beneficiary of the remaining thirty percent (30%) of the Policy.

30. Werner has been harmed by the actions of MetLife and said harm has resulted in damages to Werner.

## **FIFTH CLAIM FOR RELIEF**

### **(Nonfeasance; Misfeasance)**

31. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 30 of this Cross Claim as if each were fully set forth herein.

32. MetLife's failure to provide accurate information on its eServices system regarding Defendant's policy is nonfeasance or in the alternative is misfeasance.

33. As a result of (1) the nonfeasance or (2) the misfeasance of MetLife by failing to provide accurate information on its eServices system regarding Decedent's Policy, Werner has been harmed and said harm has resulted in damages to Werner.

**SIXTH CLAIM FOR RELIEF**

### **(Damages)**

34. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 33 of this Cross Claim as if each were fully set forth herein.

35. Werner has been damaged by MetLife's actions. Said damages include, but are not limited to the value of the remaining proceeds of the Policy, the loss of the use of those proceeds, attorneys fees and costs, and general damages in excess of Ten Thousand Dollars (\$10,000.00).

11

1 WHEREFORE, Cross Claimant Werner prays for judgment in its favor and against  
2 Cross Defendant MetLife as follows:

- 3 1. For Judgment in favor of Cross Claimant Werner and against Cross Defendant  
4 MetLife on each and every allegation and claim of this Cross Claim;
- 5 2. For Judgment in favor of Cross Claimant Werner and against all Cross  
6 Defendants for damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
- 7 3. For an order declaring that Cross Claimant Werner is entitled to the remaining  
8 life insurance proceeds of the Policy;
- 9 4. That the Court issue a briefing schedule for the parties to brief the declaratory  
10 Judgment issues raised in this Cross Claim;
- 11 5. For costs of suit herein incurred;
- 12 6. For reasonable attorney's fees; and
- 13 7. For such other and further relief as the Court may deem just and proper.

14 DATED this 9<sup>th</sup> day of August, 2007.

15 Dyer, Lawrence, Penrose  
16 Flaherty & Donaldson

17 By: Sandra G. Lawrence  
18 Sandra G. Lawrence  
19 Attorneys for Defendant  
Catherine Werner